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ARIZONA SUPREME COURT

In the matter of:)
)
SUA SPONTE PETITION TO AMEND) Supreme Court No. R-18-0014
RULE 49, RULES OF THE)
SUPREME COURT OF ARIZONA) REPLY
)
)
_____)

Petitioner files this Reply in response to the Comment of the State Bar’s General Counsel opposing creation of an Attorney Discipline Oversight Committee.

Petitioner agrees with Bar Counsel’s concerns about creating an appearance of potential influence should the Oversight Committee be allowed to review open disciplinary cases. The Committee’s access to case records should be limited to whatever is necessary to review discipline policies, and to gauge the quality and effectiveness of the Bar’s disciplinary duties, without providing the opportunity to influence on-going matters.

Accordingly, Petitioner supports the amendment to new Rule 49(e) proposed in the Comment filed by Mark I. Harrison, and for the reasons cited therein.

The Supreme Court has delegated responsibility for the receiving of complaints, intake, investigations, and prosecution of lawyer discipline to the State Bar. These activities are the most important function that the Bar performs to complete its mission "... to serve and protect the public" These regulatory functions consume the largest portion of the Bar's budget and are a critical reason to maintain an integrated bar. The only conceivable way the Board of Governors could be removed from discipline oversight, would be to remove the discipline duties from the Bar altogether. The Bar Board of Governors cannot delegate its oversight and risk management responsibilities to staff. They must have a structure that allows them to perform these duties. Additionally, it is advantageous to have governors who are very familiar with discipline operations, so they can explain the operations to the public and properly advocate for staff when undue criticism is leveled.

Petitioner does not share Bar Counsel's concern that the creation of an Oversight Committee would raise the risk of a successful *Dental Board* challenge to Arizona's system of attorney discipline. As the Southern District of Florida recently noted, the "overwhelming precedent" shows similar challenges to states, state bars, and state supreme courts have been "routinely denied" in federal courts. *Ramos v. Tomasino*, 2016 WL 8678546, at *2-3 (S.D. Fla. Aug. 25, 2016), *aff'd in part, remanded in part*, 701 Fed. Appx. 798 (11th Cir. 2017). Nevertheless, if the Court

deems it necessary, the Board could be directed to appoint a majority of non-attorney members to the Oversight Committee.

Respectfully submitted this 12th day of June 2018.

By /s/ _____
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